

1 JUDGE STEINBERG: So, witnesses will be seques-
2 tered. The Church can have one representative from the Church
3 to assist them, and they've chosen Reverend Devantier, and he,
4 he'll be the representative. You can't switch off. After
5 witnesses have completed their testimony and if, if, if you
6 can assure me that they're not going to be recalled, then they
7 can sit here. And also, Ms. Schmeltzer, you can advise the
8 witnesses that they're not to discuss their testimony with any
9 other witness or potential witnesses until all the testimony
10 is finished. I think let's get that because there might be
11 some rebuttal.

12 MR. HONIG: Is that apart of Reverend Devantier,
13 apart from his right to be here?

14 JUDGE STEINBERG: Yes. He can't discuss his testi-
15 mony with anybody other than counsel and counsel should not
16 tell the witnesses what other witnesses have testified to.
17 Okay. Now, with respect to counsel testifying, okay, your
18 request is that counsel testify about --

19 MR. HONIG: For the purpose of the same voir dire
20 which unfortunately Your Honor has, has now said won't happen.
21 Well, no, you just said --

22 JUDGE STEINBERG: I didn't say --

23 MR. HONIG: I'm sorry. I, I mis-- I misspoke.

24 JUDGE STEINBERG: When, when we get --

25 MR. HONIG: You were correct.

1 JUDGE STEINBERG: When we get Mr. Lauher up here,
2 when we get Mr. Stortz up here, when we get Reverend Devantier
3 up here, you can voir dire them as to how --
4 MR. HONIG: I'm, I'm sorry.
5 JUDGE STEINBERG: -- as to how their --
6 MR. HONIG: I apologize. I misspoke.
7 JUDGE STEINBERG: Okay. I mean, that's --
8 MR. HONIG: Okay. But I would like --
9 JUDGE STEINBERG: -- that's not my job. I, I --
10 MR. HONIG: I would also --
11 JUDGE STEINBERG: -- can't ask your questions for
12 you.
13 MR. HONIG: That, that's fine.
14 JUDGE STEINBERG: Only you know what your questions
15 are.
16 MR. HONIG: That, that's fine.
17 JUDGE STEINBERG: And, and in terms of whether Mr.
18 Lauher has, has respect for you or lack of respect for you, it
19 doesn't matter. He will have respect for your questions
20 because if he, if he doesn't I will direct him to answer your
21 questions. He will have respect for you and your questions
22 and he'll answer them and he'll answer them to, to the best of
23 his ability; otherwise he's in trouble with me. And I'm sure
24 he doesn't want to be in trouble with me.
25 Okay. Now, in terms of counsel testifying as to

1 | what they knew and when they -- Ms. Schmeltzer just stated
2 | that she received a transcript of the interview last night.
3 | What more do you want to know?

4 | MR. HONIG: Well, I'd like the same answers from
5 | the other lawyer first.

6 | JUDGE STEINBERG: Mr. Gottfried, I suppose got --

7 | MR. GOTTFRIED: Last night, Your Honor.

8 | JUDGE STEINBERG: With Ms. Schmeltzer. Mr. Zauner?

9 | MR. ZAUNER: I've never seen a transcript.

10 | JUDGE STEINBERG: Ms., Ms. Laden?

11 | MS. LADEN: I haven't seen the transcript.

12 | JUDGE STEINBERG: Okay.

13 | MR. HONIG: There are a few other questions that I
14 | would want to ask, but of course I don't want to say here
15 | what, what they are. I would be glad to go in conference,
16 | perhaps with Mr. Zauner, and explain what the questions are so
17 | that you --

18 | JUDGE STEINBERG: Well, I've --

19 | MR. HONIG: -- can determine their propriety.

20 | JUDGE STEINBERG: This is your opportunity.

21 | MR. HONIG: Well, if I do that then the, the people
22 | I'd like to voir dire of are sitting right here.

23 | JUDGE STEINBERG: They're not --

24 | MR. GOTTFRIED: Your Honor, I --

25 | JUDGE STEINBERG: -- they're not witnesses though.

1 MR. GOTTFRIED: If this, if this will take five
2 minutes or less, I'm happy to take the oath, Your Honor.

3 MR. HONIG: I hope it'll take five minutes or less.

4 MR. ZAUNER: I object on the grounds of relevancy.

5 JUDGE STEINBERG: You -- why don't you, why don't
6 you -- well, it's obviously a serious matter and, and --

7 MR. ZAUNER: I don't think it's any --

8 MS. SCHMELTZER: It's not a serious matter.

9 MR. ZAUNER: I don't think it's a serious matter at
10 all. I, I, I, I --

11 JUDGE STEINBERG: Mr. Honig thinks it's a serious
12 matter and I don't, I don't want to --

13 MR. ZAUNER: Well, he's got a Petition to Enlarge
14 he's going to file. If we enlarge issues then this may be
15 relevant, but right now I don't know what it's got to do with
16 the pending issues. It's --

17 JUDGE STEINBERG: Basically, what do, what do you
18 want to know? Did they -- did you have any knowledge -- let
19 -- you basically want to know whether counsel for the Church
20 had knowledge of, of, other than the transcript, of your
21 interview with Mr. Lauher before their exhibits were
22 exchanged?

23 MR. GOTTFRIED: Your Honor, I'll testify right now
24 I did. So what?

25 MR. HONIG: No. No.

1 MR. ZAUNER: I did. I spoke to Mr. Lauher and, and
2 I asked him whether he was asked questions by, by somebody
3 representing the NAACP. He told me he did. And I asked him
4 what he was asked. And I'll state that right now. So what?

5 MR. HONIG: There's a big difference though, Your
6 Honor, and that is that, first, Mr. Zauner is not an ad-
7 versarial party. Secondly --

8 MR. ZAUNER: I sure --

9 MR. HONIG: Hmm?

10 MR. ZAUNER: I sure am. Think of me that way,
11 please.

12 MR. GOTTFRIED: Your Honor, I can, I can represent
13 -- I didn't -- I can't remember whether it was on a phone call
14 with him or Ms. Schmeltzer reported what she had heard from
15 him. My recollection is cloudy. But, in any case, all that I
16 knew is that the first thing --

17 MR. HONIG: Your Honor, there are people --

18 JUDGE STEINBERG: Wait.

19 MR. HONIG: -- coming in.

20 JUDGE STEINBERG: Okay. You two aren't witnesses,
21 are you?

22 OBSERVER #2: No.

23 JUDGE STEINBERG: Okay.

24 MR. HONIG: Could they identify themselves, Judge?

25 JUDGE STEINBERG: Yeah, why don't you just tell us

1 | who you are?

2 | OBSERVER #2: We're from the FM Branch
3 | (indiscernible).

4 | JUDGE STEINBERG: Okay. Have a seat. Welcome.

5 | OBSERVER #2: Thank you.

6 | MR. GOTTFRIED: All that, all that I knew is that
7 | the NAACP's first question out of the bat was: were you fired
8 | because you wrote those memos, that Mr. Lauher told the NAACP
9 | what he had told us, that he had not been so fired, and that
10 | that seemed to deflate the NAACP's interviewer. That's what I
11 | was told.

12 | JUDGE STEINBERG: Okay. By Mr. Lauher?

13 | MR. GOTTFRIED: By Mr. Lauher.

14 | JUDGE STEINBERG: Ms. Schmeltzer?

15 | MS. SCHMELTZER: That's all I recall as well.

16 | JUDGE STEINBERG: Okay. Let's -- next point, your
17 | request to cross-examine counsel is denied. What's your next
18 | request?

19 | MR. HONIG: Actually, the next one was embedded
20 | within the first one, which was that all of the witnesses --
21 | that I be permitted to do voir dire of each witness, but I
22 | gather that's already --

23 | JUDGE STEINBERG: Yeah. That's what you --

24 | MR. HONIG: -- been granted?

25 | JUDGE STEINBERG: You're allowed to do that.

1 MR. HONIG: That's been granted.

2 JUDGE STEINBERG: When their, when their exhibits
3 are identified, you ask for voir dire and then you voir dire
4 away.

5 MR. HONIG: Now, the fourth one, there really are
6 two parts, one of which I guess it would be necessary to rule
7 on now, because it relates to Mr. Lauher himself, and that is
8 that, that all of the tainted testimony in this case be
9 stricken. And Mr. Lauher's certainly was, because we know
10 that he made this tape before he -- and now knows to a cer-
11 tainty what I'm going to ask him. I can't cross-examine him.
12 In fact --

13 JUDGE STEINBERG: Wait.

14 MR. HONIG: -- I have no questions for him.

15 JUDGE STEINBERG: Wait. Mr. Lauher is going to be
16 presented as a witness. Presumably his exhibit is going to be
17 identified. It's going to be moved into evidence. Objections
18 will be taken. It'll, it'll be received or not received. If
19 the exhibit is received, it'll be turned over for cross-
20 examination, at which point you make an election to cross-
21 examine or not cross-examine. You may cross-examine if you
22 wish. You may not cross-examine if you wish. But the deci-
23 sion is yours and you're going to have to live with it one way
24 or the other. I don't know that this is any different from,
25 from somebody taking a deposition of Mr. Lauher, asking him

1 the questions, then coming into the hearing and asking him the
2 questions.

3 MS. SCHMELTZER: That's right.

4 JUDGE STEINBERG: But that's your decision to make.

5 MR. GOTTFRIED: Your Honor --

6 JUDGE STEINBERG: If, if you want to move that his
7 testimony be stricken, you do so at the appropriate time.

8 I'll hear your argument and I'll rule. Okay. Next question.

9 MR. HONIG: Okay. And the fifth, the fifth request
10 relates to the issue that I've moved for, and of course I
11 don't expect you to rule on, on that today. Now --

12 JUDGE STEINBERG: Okay. So, you have no fifth
13 request?

14 MR. HONIG: No. That -- well, the fifth request is
15 to add the issue, but that's --

16 JUDGE STEINBERG: Oh.

17 MR. HONIG: -- not a -- an, an injunctive type
18 request. That's a substantive Motion to Enlarge --

19 JUDGE STEINBERG: Yeah.

20 MR. HONIG: -- type request.

21 JUDGE STEINBERG: I'll rule when I -- when the
22 pleading cycle is finished.

23 MR. HONIG: Okay. May I now take up the matter of,
24 of interference with one of our witnesses?

25 JUDGE STEINBERG: Is that, is that part of the

1 | Petition to Enlarge?

2 | MR. HONIG: Yes. But I'm also asking for injunc-

3 | tive relief relative to that matter, which I would like to lay

4 | out.

5 | MS. SCHMELTZER: Your Honor, we would like to get

6 | on with Mr. Lauher since he's here and --

7 | JUDGE STEINBERG: Okay.

8 | MS. SCHMELTZER: -- I mean --

9 | JUDGE STEINBERG: Are we finished with all the

10 | matters relating to Mr. Lauher?

11 | MR. HONIG: Yes.

12 | JUDGE STEINBERG: Let's have Mr. Lauher on, and

13 | then --

14 | MS. SCHMELTZER: I, I would like to just raise one

15 | issue then --

16 | JUDGE STEINBERG: Sure.

17 | MS. SCHMELTZER: -- and that is we have not had an

18 | opportunity to go through Mr. Honig's rebuttal exhibits to

19 | determine --

20 | JUDGE STEINBERG: I haven't either.

21 | MS. SCHMELTZER: -- what's going to be stricken and

22 | what's not. We may have some surrebuttal.

23 | JUDGE STEINBERG: Okay. Let me -- while we're

24 | doing -- I --

25 | MS. SCHMELTZER: And I don't know how to deal with

1 | that with these witnesses.

2 | JUDGE STEINBERG: We won't deal with them today.

3 | MS. SCHMELTZER: Okay.

4 | JUDGE STEINBERG: I haven't read Mr. Honig's ex-
5 | hibits. I, I skimmed through the index. One of them I noted
6 | -- and I -- one of them I noted was, at least my copy, was
7 | totally illegible.

8 | MS. SCHMELTZER: Yes, that's right. And our copy
9 | as well.

10 | JUDGE STEINBERG: In like No. 4 or something like
11 | that?

12 | MS. SCHMELTZER: Right. One of the --

13 | JUDGE STEINBERG: But that's curable. I mean,
14 | that's easy. So, you know, when, when you go through to --
15 | when you have your, your paralegal go through and tab and bind
16 | them, have her check to see what's readable and what's not and
17 | just, just replace the pages that aren't. My suggestion is
18 | going to be -- I, I haven't gone through this. Ms.
19 | Schmeltzer, you haven't either?

20 | MS. SCHMELTZER: Yes, I have. I guess the first 11
21 | are the most important --

22 | JUDGE STEINBERG: Right.

23 | MS. SCHMELTZER: -- because depending on whether
24 | they're stricken or not we might need to cross-examine a few
25 | people and we might need surrebuttal.

1 JUDGE STEINBERG: Okay. And, Mr. Zauner, have you
2 had -- have you looked through the exhibits, or Ms. Laden?

3 MR. ZAUNER: Yes, I have, Your Honor.

4 JUDGE STEINBERG: Okay. I haven't. I -- what I'm
5 going to suggest is why don't we agree -- we can do this after
6 we finish with the witnesses today.

7 MS. SCHMELTZER: That would be great.

8 JUDGE STEINBERG: Because these witnesses have to
9 get out today. We can agree on having an Admissions Session
10 on the NAACP's exhibits and --

11 MS. SCHMELTZER: At least the first 11. After that
12 we can defer them.

13 JUDGE STEINBERG: Well, Mr. Honig, you prefer to do
14 them all, correct?

15 MR. HONIG: I'd like to get them all done so that,
16 that when the witnesses for both sides are testifying they can
17 spend the maximum amount of their time being asked questions
18 as opposed to having documents identified --

19 JUDGE STEINBERG: Okay. So, during the break all,
20 all three counsel get together and decide when we're going to
21 do that and then I'll, and then I'll be prepared to do that.
22 So --

23 MS. SCHMELTZER: I'd like to do it today if we can,
24 after these witnesses --

25 JUDGE STEINBERG: Well, I haven't, I haven't -- if

1 we're going to have time. I haven't read through them yet,
2 but maybe if, if things go short maybe I can.

3 MR. HONIG: Judge, one of the matters in the in-
4 junctive relief on the second matter I wanted to raise relates
5 to all witnesses, and of course that includes Mr. Lauher, so
6 I, I think realistically I would like to be able to discuss it
7 --

8 JUDGE STEINBERG: Okay. Why don't you, why don't
9 you state what, what, what relief you want.

10 MR. HONIG: Well, may I explain the problem? I, I
11 know this won't take a quarter as long as the other one.
12 It's, it's quite straightforward.

13 JUDGE STEINBERG: Okay.

14 MR. HONIG: We have a witness by the name of
15 Reverend Otis Woodard. He is a Lutheran lay minister.
16 Reverend Woodard is important because in the Opposition to the
17 Motion --

18 JUDGE STEINBERG: New people came in. Are you, are
19 you with the FCC?

20 OBSERVER #3: Yes.

21 JUDGE STEINBERG: Okay. Thank you. This is quite
22 a popular hearing. I wish I had the popcorn concession.

23 (Laughter.)

24 JUDGE STEINBERG: Okay. Exhibit 11, Otis Woodard,
25 W O O D A R D?

1 MR. HONIG: That's right.

2 JUDGE STEINBERG: Okay.

3 MR. HONIG: He's important because in the February
4 1990 Opposition to the Motion to Enlarge and on subsequent
5 pleading that was filed by then-counsel Arnold and Porter, Mr.
6 -- Reverend Woodard was identified as the one African-American
7 referral source who was used by the Church, albeit at the very
8 end of the license term, for, for job referrals, and Mr.
9 Woodard's Declaration states that in fact he, he wasn't. And,
10 and I believe the Church knew or should have known that Mr.
11 Woodard would, would have that testimony because in fact their
12 people interviewed everyone early. They got out of the box a
13 little before we did.

14 I went to St. Louis last Monday, the evening the
15 13th. On the 15th in the morning Reverend Woodard received a
16 call from Dennis Stortz, and we have a Declaration from him
17 that lays this out. And Mr. Stortz basically said to him: we
18 want to be your friend, we'd like you to do some public ser-
19 vice announcements for the station, and held out the possibil-
20 ity of a job at some point. Fortunately it didn't work. That
21 afternoon Reverend Woodard signed what is now NAACP Exhibit
22 11.

23 On Friday afternoon when I flew back here with the
24 exhibits my paralegal delivered them, and shortly after they
25 were delivered to Church counsel Reverend Woodard got another

1 call from Mr. Stortz in which he said: well, this testimony
2 is, is wrong; no, we really didn't contact you, we contacted
3 your former wife. And I can assert to you Reverend Woodard
4 will testify that that's not so, she didn't have anything to
5 do with this. But it's a matter of great embarrassment for
6 him and he's now, he's now remarried.

7 This, to say the least, pushes the envelope of the
8 appropriate treatment of the other side's witnesses. Certain-
9 ly, and we cite a couple cases in here to this effect, the
10 Church knew or should have known that Reverend Woodard would
11 be a witness and would be a very, very important witness, and
12 certainly that the NAACP would be quite interested in him. In
13 fact, during Mr. Stortz's and Reverend Devantier's depositions
14 I inquired about these contacts with Reverend Woodard at some
15 length. And while these attempts, what I consider to be
16 intimidation of this witness, fortunately were unsuccessful,
17 when you meet Reverend Woodard you will see why they were
18 unsuccessful, we've cited cases to the effect that it is the
19 endeavor that is, that is the harm and not the success of the
20 endeavor that's the harm.

21 MR. ZAUNER: Your Honor, can we ask a question?

22 JUDGE STEINBERG: What --

23 MR. ZAUNER: What, what has this got to do --

24 JUDGE STEINBERG: What's this got to do with --

25 MR. ZAUNER: -- with Mr. Lauher?

1 MR. HONIG: Nothing, except that one of the re-
2 quests that I'm going to make for relief relates to all wit-
3 nesses, and Mr. Lauher is a witness.

4 JUDGE STEINBERG: Okay.

5 MR. HONIG: Would it be appropriate --

6 JUDGE STEINBERG: Why don't you make the request?

7 MR. HONIG: Okay. The first request is that all of
8 the persons in the, in the Church or their counsel who have
9 anything to do with this case be restrained from having any
10 contact during this hearing with the 10 people -- one has two
11 Declarations -- the 10 people who are, are our witnesses.

12 JUDGE STEINBERG: Ms. Hutchinson, right?

13 MR. HONIG: Ms. Hutchinson.

14 JUDGE STEINBERG: She's got two Declarations?

15 MR. HONIG: She has two. And, and the other nine,
16 nine people. I don't really care about the law professor. He
17 can handle himself, but certainly the others.

18 JUDGE STEINBERG: Ms. Schmeltzer?

19 MS. SCHMELTZER: Well, I -- interestingly, Reverend
20 Woodard has had an application for a job at KFUD, I under-
21 stand, for some time now, so it would be rather unusual for
22 the station not to be able to contact him, since he is a job
23 applicant and they, they have had a number of discussions over
24 the years. I would just disagree with Mr. Honig's
25 characterization of the events that occurred. There certainly

1 was no intimidation whatsoever.

2 JUDGE STEINBERG: Well, we can argue -- you can
3 argue intimidation in, in, in your Opposition. Let me just
4 ask -- let me ask Mr. -- do you have any other comment, Ms.
5 Schmeltzer?

6 MS. SCHMELTZER: Well, I, I just think that there's
7 no basis for the relief that's requested by Mr. Honig.

8 JUDGE STEINBERG: Mr. Zauner?

9 MR. ZAUNER: I, I think counsel in this proceeding
10 has the right to contact any witness that they want to con-
11 tact, for, for whatever reason.

12 MR. HONIG: Judge, if I may respond?

13 JUDGE STEINBERG: You can respond briefly and then
14 I'll rule.

15 MR. HONIG: There's a, there's a, a well-estab-
16 lished body of law inside and outside the Commission of which
17 I cited cases to the effect that there are limits on a Party's
18 ability to contact especially witnesses that they know are
19 critical to the other side. It often happens in civil rights
20 cases. And the fact that Mr. -- that Reverend Woodard had a
21 job application pending I think is -- I would agree with Ms.
22 Schmeltzer that's very significant because the Church knew
23 exactly what button to push and they pushed it.

24 MS. SCHMELTZER: Your Honor, I will say for the
25 record this is not a civil rights case. This is an EEO pro-

1 | ceeding before the FCC.

2 | JUDGE STEINBERG: Okay. I'm going to rule. You
3 | want to contact the witnesses, you can contact the witnesses.
4 | You want to depose them -- well, we'll get to that if you want
5 | to depose -- if -- how can they depose these witnesses if they
6 | can't contact them?

7 | MR. HONIG: One of my --

8 | JUDGE STEINBERG: If --

9 | MR. HONIG: -- my next re-- my --

10 | JUDGE STEINBERG: If -- well, if, if you exceed the
11 | limits then you risk getting another Petition to Enlarge.
12 | Okay. What --

13 | MR. HONIG: My next request --

14 | JUDGE STEINBERG: Do you understand my ruling?

15 | MR. HONIG: -- was that they were going -- was that
16 | there be no depositions and that -- but --

17 | JUDGE STEINBERG: Well --

18 | MR. HONIG: -- in, in order to do --

19 | JUDGE STEINBERG: If, if I get a --

20 | MR. HONIG: -- in order to --

21 | JUDGE STEINBERG: If I get a request that these
22 | individuals be, be deposed, then we can argue it then. Okay?
23 | I don't have the request in front of me, so it's premature to
24 | argue it now. You want to depose them, you can file your
25 | Notices of Deposition. Do you represent any of these or all

1 of these people individually?

2 MR. HONIG: Oh, in an individual capacity?

3 JUDGE STEINBERG: Yeah.

4 MR. HONIG: To be determined.

5 JUDGE STEINBERG: To be determined. All right.

6 MR. HONIG: I think one or two of them may have
7 their own counsel. Others may be simply relying on the NAACP.

8 JUDGE STEINBERG: Okay. So, we can't -- I mean,
9 it's up to them whether they want to waive the 21-day period
10 and it's not up to Mr. Honig, unless he represents them in
11 their individual -- do you understand? The rules provide for
12 a 21-day notice period. It can be waived if, if they want to
13 waive it. If Mr. Honig doesn't represent these people indi-
14 vidually, then he can't act on their behalf. Okay. Any other
15 --

16 MR. HONIG: The third --

17 JUDGE STEINBERG: -- requests?

18 MR. HONIG: Yes. The third, the third request
19 apart from adding the issue, which I won't speak to now, is
20 that in the voir dire that I would like to conduct of, of the
21 Church's witnesses, I be permitted to ask about any contacts
22 or attempts to contact our 10 witnesses from the time that the
23 Church first had reason to believe that they may -- might be
24 our witnesses until the present.

25 JUDGE STEINBERG: You may ask any question you want

1 on voir dire. If it's objected to I'll rule.

2 (Off the record.)

3 (On the record.)

4 JUDGE STEINBERG: Now, are we ready for Mr. Lauher?

5 MR. HONIG: Yes.

6 MR. GOTTFRIED: Your Honor --

7 MS. SCHMELTZER: I do have -- still have a question
8 on the surrebuttal aspect. If Mr. Lauher has knowledge con-
9 cerning a possible witness of the NAACP --

10 JUDGE STEINBERG: Let's wait and see if he -- let's
11 wait until after rebuttal to see if you want surrebuttal.

12 MR. GOTTFRIED: Yes.

13 MS. SCHMELTZER: Okay. That's fine.

14 MR. HONIG: Your Honor, if, if I may, and if there
15 is sequestration and, and counsel will assure me that, that,
16 that Mr. -- that they will not share with Mr. Lauher what has
17 just transpired, I would like about a ten-minute recess to
18 confer with Bureau counsel to see if they might be able to
19 assist me in developing a, a suitable voir dire. And, quite
20 frankly, the reason is I'm physically tired and won't be
21 thinking clearly and, and I want their help.

22 MR. ZAUNER: Well, first we have to discuss my
23 rates, Your Honor. I, I, I charge for private consultations.

24 MS. SCHMELTZER: I think we should --

25 MR. ZAUNER: Let me -- while I've got this

1 opportunity, let me clarify one other point. I, I, I said to
2 Mr. Honig that he should think of me as an adversary. That
3 goes for the Church also. The Bureau has its own agenda in
4 this proceeding, and that is to develop a full and complete
5 record and we're not in either Party's control in, in that
6 regard, and that's what I meant by thinking of me as an adver-
7 sary. So, that warning being out --

8 MR. HONIG: I understood that --

9 MR. ZAUNER: -- I'd like to stand --

10 MR. HONIG: -- you meant that and I, I appreciate
11 this statement.

12 JUDGE STEINBERG: Okay. Why don't we take a brief
13 recess. You can collect your thoughts. We'll start with Mr.
14 Lauher at 10:25.

15 MR. ZAUNER: Why -- what's the purpose of this
16 recess? To -- I'm not going to consult with anybody on --

17 JUDGE STEINBERG: No.

18 MR. ZAUNER: -- the voir dire question.

19 JUDGE STEINBERG: Let Mr. Honig collect his
20 thoughts as to how he wants to proceed with Mr. Lauher and --
21 which is only about seven minutes.

22 MR. HONIG: All right. Your Honor, I could really
23 use more like 15, to tell you the truth. I've not slept.

24 MS. SCHMELTZER: No.

25 MR. HONIG: And this -- and, and --

1 JUDGE STEINBERG: I think, I think we --

2 MR. HONIG: -- some of the rulings caught me by
3 surprise and I just need a minute to review --

4 JUDGE STEINBERG: Well --

5 MR. HONIG: And I think other counsel might well
6 want to take a few minutes and read my motions.

7 JUDGE STEINBERG: Well, you can distribute your
8 motion. We'll start with Mr. Lauher at 10:25. We'll be in
9 recess until 10:25.

10 (Whereupon, off the record at 10:18 a.m. Back on the
11 record at 10:25 a.m.)

12 JUDGE STEINBERG: Raise your right hand, please.
13 Please be seated. And if you would, state your name and
14 address and phone number --

15 WITNESS: My name is Thomas M. Lauher, 2230 North
16 Ballas Road, St. Louis, Missouri, 63131. (314) 991-5042.

17 JUDGE STEINBERG: Okay. That's just in case any-
18 body has to call Mr. Lauher. You've got his phone number.
19 Ms. Schmeltzer?

20 MS. SCHMELTZER: Yes. Your Honor, I would like to
21 have identified as Church Exhibit 6 the Testimony of Thomas M.
22 Lauher. It's a three-page Declaration.

23 JUDGE STEINBERG: Okay. The document described
24 will be marked -- do you want it marked Church Exhibit 6?

25 MS. SCHMELTZER: That's correct.

1 JUDGE STEINBERG: It's Church Exhibit 6.
2 (Whereupon, the document referred
3 to as Church Exhibit No. 6 was
4 marked for identification.)

5 Whereupon,

6 THOMAS M. LAUHER
7 having first been duly sworn, was called as a witness herein
8 and was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. SCHMELTZER:

11 Q Mr. Lauher, do you have a copy of what's been
12 identified as Church Exhibit 6 in front of you?

13 A Yes, I do.

14 Q And if you would look through that, sir. Do you
15 have any changes or corrections to your Declaration?

16 A Yes. On the -- well, on the first page of the
17 actual Declaration in paragraph 3, I think there was a typo
18 down toward the bottom of that section. It should read, "We
19 wanted to hire a variety of people and wanted to hire
20 minorities."

21 Q With that correction would your Declaration --

22 JUDGE STEINBERG: Okay. Let me just -- so, you
23 want to cross off the word "a"? This is second to the --
24 second line to the bottom. Part, part of the sentence is
25 "...people and wanted to hire a minority." You wanted to

1 cross out "a" and make "minority" plural?

2 WITNESS: Yes.

3 MR. HONIG: I would object. It grossly changes the
4 meaning of the sentence. The witness has sworn this in this
5 form. It was developed with the assistance of counsel. I
6 think it's a little late to be changing the testimony.

7 JUDGE STEINBERG: Okay. Do you want to voir dire
8 on the change?

9 MR. HONIG: Yes.

10 JUDGE STEINBERG: Go ahead.

11 VOIR DIRE EXAMINATION

12 BY MR. HONIG:

13 Q Mr. Lauher, I'm David Honig. Did you sign your
14 testimony -- is this your signature at the end of -- on
15 page 3?

16 A Yes.

17 Q That was signed on May 21, 1994?

18 A Yes.

19 Q Who wrote the -- who, who drafted this testimony?

20 A This is my testimony.

21 Q Did you physically write it yourself? Are these
22 your words or was it based on a draft that counsel supplied
23 you for your consideration?

24 A These are my words and it was based on a draft that
25 was --

1 Q Now, looking at the sentence, "We wanted to hire a
2 variety of people and wanted to hire a minority," was the
3 original draft of that your words or counsel's?

4 A My words.

5 Q Now -- and when you signed the, the Declaration,
6 you, you read the -- it -- you read it in its entirety before
7 it was signed, is that not right?

8 A Yes, I did.

9 Q Was counsel present when you signed it?

10 A Yes.

11 MR. HONIG: Your Honor, I would -- I have no fur-
12 ther voir dire on that point but would, based on what was just
13 heard, I would restate my objection to the change in the
14 testimony since the witness has testified that the original
15 words were his words, and he certainly was well-represented
16 when he signed his Declaration.

17 JUDGE STEINBERG: Mr. Zauner, do you want any voir
18 dire?

19 MR. ZAUNER: No, Your Honor.

20 JUDGE STEINBERG: Do you have, do you have any
21 position on this?

22 MR. ZAUNER: We have no objection to the change in
23 the testimony.

24 MS. SCHMELTZER: I don't think Mr. Honig has shown
25 any basis for striking the change.

1 JUDGE STEINBERG: I'm going to, I'm going to allow
2 the change to be made but I'm going to allow Mr. Honig to
3 argue at the time -- to argue in Findings, if, if appropriate,
4 what, what the original language was and what the, and what
5 the new, what the new language is. Of course, it is -- it
6 does change its meaning.

7 EXAMINATION

8 BY JUDGE STEINBERG:

9 Q What -- let me just ask Mr. Lauher why -- when did
10 you discover this discrepancy?

11 A In reading it over several days ago. I don't
12 recall the exact --

13 Q When is the first time you, you noted this -- did,
14 did you tell counsel that there was a discrepancy?

15 A In -- the first time I noticed it it was in reading
16 it in this format.

17 Q When you say "this format," you mean bound and --

18 A Yes.

19 Q And, and when was the first time you did that?

20 A I received it in my home last week late in the
21 week. I don't recall which day exactly.

22 Q And when did you tell counsel? Or did you tell
23 counsel that there was a --

24 A We discussed that yesterday.

25 JUDGE STEINBERG: Okay. So, that change will, will